

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. 17-800-CFC

v.

ARRAY NETWORKS INC.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. 17-925-CFC

v.

SPECTRA LOGIC CORPORATION,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. 17-1635-CFC

v.

FORTINET, INC.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. No. 17-1676-CFC

v.

REDUXIO SYSTEMS, INC.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. No. 18-1199-CFC

v.

SOFTNAS, INC.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. No. 18-1200-CFC

v.

PANZURA, INC.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. No. 18-2017-CFC

v.

CTERA NEWORKS, LTD.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. 18-1964-CFC

v.

QUEST SOFTWARE, INC.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. No. 18-2062-CFC

v.

ARYAKA NETWORKS, INC.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. 19-279-CFC

v.

NIMBUS DATA, INC.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. 19-394-CFC

v.

OPEN TEXT, INC.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. 19-492-CFC

v.

MONGODB, INC.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. 19-350-CFC

v.

KAMINARIO, INC.,

Defendant.

REALTIME DATA, LLC., d/b/a IXO

Plaintiff,

C.A. 20-1498-CFC

v.

EGNYTE, INC.,

Defendant.

REALTIME DATA LLC d/b/a IXO,

Plaintiff,

C.A. No. 20-1497-CFC

vs.

BUURST, INC. f/k/a SOFTNAS, INC.,

Defendant.

JOINT STATUS REPORT

In advance of the February 12, 2021 status conference, and pursuant to the Court's Oral Order, the parties in the above-entitled actions respectfully provide the following status report:

Plaintiff's Position:

Plaintiff Realtime Data, LLC respectfully requests that any case listed above presently stayed as a result of the Court's prior ruling that the patents were invalid be lifted. Most of the cases previously had a scheduling Order in place (*see* C.A. 1:17-cv-00800-CFC, D.I. 35). However, some of the cases never had a scheduling order issued (*e.g.* CA 1:19-cv-00279), other cases were dismissed and re-filed pursuant to tolling agreements (*e.g.*, C.A. 1:20-cv-1498-CFC, C.A. 1:20-cv-1498-CFC), and at least one case was stayed prior to the Court's invalidity ruling for other reasons (C.A. 1:17-cv-00925-CFC). Realtime believes a single consolidated scheduling order should be set in all of the cases that is largely in keeping with the time frame set in the Court's Order, but includes time for the cases in which no Order was entered or which otherwise were not on that schedule to catch up. Realtime requests 14 days to meet and confer with Defendants and propose a consolidated schedule for the Court's consideration.

Defendants propose that the Court stay this action pending resolution of their various Rule 12 motions. The general practice in this District does not stay cases pending the outcome of Rule 12 motions. Realtime maintains that the various motions to dismiss lack merit, including for reasons articulated in the briefing on the various motions, and for reasons articulated in the majority and concurring opinions issued by the Federal Circuit in this matter. But as a general

matter, a further stay pending the various motions would constitute an unwarranted departure from general practices in this District. Realtime respectfully submits that the parties to these various cases should confer to propose a coordinated schedule to allow these cases to move forward efficiently.

Defendants' Position:

Defendants in the above-captioned actions (the actions collectively, the “Actions” and the parties collectively, the “Parties”) respectfully submit that these cases should be stayed, or remain stayed, until final resolution of the motions to dismiss for patent ineligibility under 35 U.S.C. § 101 of U.S. Patents 7,415,530; 8,717,230; 9,054,728; 9,116,908, and 9,667,751 (collectively, the “Challenged Patents”), brought by Fortinet, Inc., Reduxio Systems, Inc., Aryaka Networks, Inc., and Panzura Inc. (the “Motions to Dismiss”) including by this Court on remand from the U.S. Court of Appeals for the Federal Circuit, and any further appeals thereof. *See Realtime Data LLC v. Fortinet, Inc.*, No. 17-1635-CFC, D.I. 11 (D. Del. Feb. 20, 2018); *Realtime Data LLC v. Reduxio Systems, Inc.*, No. 17-1676-CFC, D.I. 9 (D. Del. Mar. 27, 2018); *Realtime Data LLC v. Aryaka Networks, Inc.*, No. 18-2062-CFC, D.I. 15 (D. Del. May 6, 2019);

Realtime Data LLC v. Panzura Inc., No. 18-1200-CFC, D.I. 21 (D. Del. Feb. 15, 2019) (collectively, the “Remanded Actions”).¹

After extensive and thorough briefing by Appellees and Realtime, the Court conducted a hearing on July 19, 2019. At the conclusion of that hearing, the Court ruled that all claims of the Challenged Patents are invalid as patent ineligible. Realtime appealed. On October 23, 2020, the Federal Circuit issued an opinion vacating and remanding this Court’s order on the Motions to Dismiss for further consideration. *Realtime Data LLC v. Reduxio Systems, Inc.*, 831 Fed. Appx. 482, 499 (Fed. Cir. Oct. 23, 2020). The opinion expressly stated that “[n]othing in [its] opinion should be read as opining on the relative merits of the parties’ arguments or the proper resolution of the case.” *Id.* at 499. Instead, the Federal Circuit reversed to allow “the district court to give additional

¹ There were no proceedings during the pendency of the Federal Circuit Appeal, however, there are a variety of different specific procedural postures among the cases. For example, the Remanded Actions were directly involved in the appeal, some cases were not involved directly in the appeal but were stayed pending the outcome of the appeal (the “Stayed Actions”, C.A. Nos. 17-800-CFC; 17-925-CFC; 18-1964-CFC; 18-2017-CFC; 19-297-CFC; 19-350-CFC; 19-394-CFC; and 19-492-CFC) or pending the resolution of other dispositive motions (17-925-CFC) (*infra* n.3), and some cases were dismissed without prejudice pending the Federal Circuit’s decision and were re-filed by Plaintiff following the Federal Circuit’s remand (the “Re-filed Actions,” C.A. Nos. 20-1497-CFC and 20-1498-CFC). Defendants in all cases request that their cases be or remain stayed pending a ruling by this Court on the Motions to Dismiss regardless of the particular procedural posture of their individual cases.

consideration to the eligibility question and elaborate on its reasoning.” *Id.* at 496.

The Actions all involve patent claims brought by Realtime Data, LLC (“Realtime”) regarding various combinations of patents, all of which are either Challenged Patents, or patents related to them. The Actions that were not part of the appeal were initially stayed or dismissed without prejudice by stipulation to preserve the resources of the Court and parties while the patent-eligibility of the Challenged Patents were fully litigated and finally resolved. This rationale continues to apply in full force.² Given the Federal Circuit’s order, the validity of the Challenged Patents have not yet been fully resolved, and thus the Parties believe that the cases should be or remain stayed pending resolution of the § 101

² In the *Realtime Data v. Kaminario* case, 19-cv-350, Kaminario moved to dismiss the three patents in that lawsuit (one of which overlaps the Challenged Patents, the other two of which are related to the Challenged Patents) under 35 U.S.C. § 101. D.I. 12. After Kaminario filed its motion to dismiss in light of Section 101, Realtime Data filed an amended complaint, purporting to recite additional facts it later contended would make the patents survive a Section 101 challenge. D.I. 18. Kaminario then refiled its motion to dismiss. D.I. 23. That motion is fully briefed. D.I. 24, 33, 34. Kaminario agrees that the Stayed Actions should continue to be stayed for the reasons stated herein, but if the Court intends to unstay the Stayed Actions, Kaminario requests the Court rule on its pending Section 101 motion prior to further action in the Kaminario case. Similarly, in *Realtime Data, LLC v. Quest Software, Inc.*, No. 18-cv-1964, a motion to dismiss based on a licensing defense was fully briefed at the time of the stay. Quest agrees that the Stayed Actions should continue to be stayed for the reasons stated herein, but if the Court intends to unstay the Stayed Actions, Quest requests the Court rule on its pending motion to dismiss prior to further action in the Quest case.

issues. Accordingly, the Defendants respectfully request that the Court decline Plaintiff's request to initiate scheduling procedures, and instead stay all of the Actions until resolution of the Motions to Dismiss by a final un-appealed and unappealable order.^{3,4}

³ The Court stayed the case against Spectra Logic (C.A. No. 17-925) pending the resolution of its non-101 motion to dismiss. (*Id.*, D.I. 57 (stay order), D.I. 44 (motion)). Spectra Logic's motion to dismiss, which remains pending before the Court, avers that Realtime failed to state a claim against Spectra Logic. In short, Realtime's claims of infringement against Spectra Logic are centered on a so-called "joint solution" by Spectra Logic and former defendant Commvault Systems, Inc. ("Commvault"). Realtime dismissed its case against Commvault with prejudice in 2018 (*id.*, D.I. 38), and there are no allegations of infringement by any Spectra Logic product alone. (*id.*, D.I. 44 (citations omitted)). While Spectra Logic joined in the codefendants' 101 motion (*id.*, D.I. 41) and joins the request to continue the stay of all related actions for the reasons stated herein, Spectra Logic further respectfully requests that the Court deny Realtime's request to disrupt the unopposed stay pending the Court's resolution of the non-101 motion (*id.*, D.I. 57). C.A. No. 17-925 should remain stayed regardless of the Court's decision concerning the schedules in the other cases.

⁴ Defendant Aryaka Networks further notes that its motion to dismiss and supporting papers (No. 18-2062-CFC, D.I. 15-16) also sought dismissal of Plaintiff's claims for infringement of U.S. Patent No. 9,054,728 on additional grounds – namely, that because the '728 patent expired prior to suit, Plaintiff's failure to plead that it had complied with its obligations under 35 U.S.C. § 287(a) mandates dismissal of its claims for infringement thereof. Aryaka joins the request to continue the stay of all Actions for the reasons stated herein, and further respectfully requests that, in the event that the Court were to permit the Actions to proceed, the Court should rule on its additional basis for dismissal, which would significantly affect the scope of the case.

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